

Integration of Living Law as an Optimization of Diversion in the Juvenile Justice System in Indonesia

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Abstract

The implementation of diversion in the Juvenile Criminal Justice System remains suboptimal, as reflected in fluctuating success rates during the 2021–2024 period, ranging from 21% to 70%. This gap between law in the books and law in action indicates that the normative objectives of the system have not been consistently achieved in practice. This study aims to analyze the effectiveness of diversion, identify key challenges, and formulate a more adaptive policy model through the integration of living law values within the Balinese, Baduy, Dayak, and Nias communities, which were purposively selected to represent the diversity of customary legal systems in Indonesia. The research employs a normative juridical approach enriched with empirical data obtained from focus group discussions (FGDs), interviews, and national quantitative data from 2021–2024. The findings reveal that the low success rate of diversion is influenced by limited institutional capacity, weak structural

support, and low social legitimacy. As its main contribution, this study proposes an “integrative diversion formula” based on living law, which incorporates three key principles: (i) participatory deliberation, (ii) restoration of social relationships, and (iii) community balance. This model emphasizes the strengthening of social legitimacy as a prerequisite for successful diversion. Accordingly, this study contributes a more contextual policy model that enhances the effectiveness of juvenile case resolution in a more inclusive, humane, and socially just manner.

KEYWORDS *Diversion, Integrated Criminal Justice System, Living Law Integration*

Introduction

Under Indonesian positive law, a child is defined as any person who has not yet reached the age of 18 years, including those who are still in the womb. This legal definition reflects the state’s recognition that children constitute a vulnerable group requiring special protection in various dimensions of life. Such vulnerability extends beyond physical aspects to encompass psychological, emotional, and social factors that influence children’s capacity to comprehend their actions, assess consequences, and participate fully in legal processes. Consequently, subjecting children to the same criminal justice mechanisms applied to adults may result in adverse impacts, including psychological trauma, social stigmatization, and impediments to their long-term development. In light of these considerations, the establishment of specific legal frameworks is essential to ensure that the implementation of law enforcement measures prioritizes the best interests of the child and upholds their rights throughout the criminal justice process.¹

The state’s commitment to protecting children is demonstrated through the enactment of Law Number 11 of 2012 on the Juvenile Criminal Justice System (SPPA). This regulation marks a paradigm shift in the handling of children in conflict with the law, from a retributive approach to a restorative one.² The primary principle adopted is the best interests of the child,

¹ Lilik Mulyadi, *Wajah Sistem Peradilan Pidana Anak Indonesia*. (Bandung: Penerbit Alumni, 2023).

² Sri Rahayu Oktavia and Hervina Puspitosari, “Analisis Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Pencurian Dengan Diversi Berdasarkan Undang-Undang No 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak,” *COMSERVA Jurnal Penelitian dan Pengabdian Masyarakat* 2, no. 12 (2023): 167–186.

emphasizing recovery, reconciliation, and social reintegration.³ This paradigm was chosen because children are not viewed solely as perpetrators of crimes, but as individuals with significant potential for change. One of the primary instruments for this goal is the diversion mechanism, which is central to the restorative approach in the Juvenile Criminal Justice System.⁴

Diversion is an effort to redirect the resolution of children's cases from formal justice channels to alternative, recovery-based mechanisms. Through diversion, children can assume responsibility without undergoing a judicial process that may lead to stigma and developmental disruption. This mechanism not only prioritizes conflict resolution between perpetrators and victims but also focuses on restoring damaged social relationships. Furthermore, the principle of diversion aligns with Indonesia's international obligations under the Convention on the Rights of the Child, which encourages the resolution of children's cases outside the courts. Therefore, diversion is not merely a technical policy but part of the state's commitment to guaranteeing the substantive protection of children's rights.⁵

Despite its normative foundation, the implementation of diversion still faces significant obstacles. Findings from various Focus Group Discussions indicate a significant gap between legal norms and implementation practices. This gap arises from structural barriers, such as limited resources; cultural barriers, including community resistance; and substantive obstacles within the Child Protection Regulations. These conditions prevent the primary goal of diversion, namely, child recovery and protection, from being optimally achieved. Therefore, successful diversion requires comprehensive improvements, both regulatory and institutional.⁶ One objective of reforming the national criminal law system is to examine corresponding legal systems and relevant legal theories compatible with national law.⁷

³ Handika Ridho Utomo and Anis Widyawati, "Implementasi Diversi Pada Tindak Pidana Narkotika Anak Guna Mewujudkan Keadilan Restoratif (Studi Kasus Kota Salatiga)," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 5, no. 1 (2025): 117–143.

⁴ Asmita Widimartha Nainggolan dan Yasmirah Mandasari Saragih, "Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Anak," *Journal of Social Science Research* 3, no. 4 (2023): 6371–83.

⁵ Alifah Nahda et al., "Diversi Dalam Perspektif Psikologi Anak," *Judge : Jurnal Hukum* 6, no. 01 (2025): 275–281.

⁶ Munajat Minajat, *Hukum Pidana Anak di Indonesia*. (Jakarta Timur: Sinar Grafika, 2022), 258.

⁷ Anis Widyawati et al., "Strengthening the Correctional System through Electronic Supervision of Prisoners: A Comparative Legal Study for Reforming Indonesia's Penitentiary Law," *Jurnal Hukum Novelty* 16, no. 2 (2025): 264.

The normative limitations in Article 7 of the Juvenile Criminal Justice System Law are a major obstacle to the implementation of diversion. The stipulation that diversion can only be applied to crimes punishable by less than seven years in prison and not to recidivists limits the reach of this mechanism. As a result, various juvenile cases that should be more appropriately resolved through restorative means are still processed through formal justice channels. This raises the risk of revictimization, stigmatization, and the possibility of children being placed in Special Child Development Institutions, which do not always support the recovery process. Thus, these normative limitations potentially conflict with the principle of the best interests of the child, the primary foundation of the Juvenile Criminal Justice System.⁸

Data from the Supreme Court's 2024 Annual Report indicate significant fluctuations in diversion success rates, reflecting weak implementation consistency.⁹ The diversion success rate increased from 21.13% in 2021 to 40.30% in 2022 and reached 70.62% in 2023, before declining to 42.57% in 2024. At the same time, the proportion of cases remaining in process was particularly high in 2021 (65.49%) and again in 2024 (40.06%), indicating that procedural completion remains inconsistent. These fluctuations suggest persistent structural challenges in diversion implementation, including uneven institutional coordination, administrative delays, and differing levels of understanding of restorative justice among law enforcement actors. Findings from the Focus Group Discussion (FGD), as presented by Dr. Hj. Diah Sulastri Dewi, S.H., M.H. (Chief Judge of the Riau High Court), confirm that these conditions are influenced by the absence of an integrated database, weak inter-agency coordination, inconsistent interpretation of restorative justice principles, and delays in judicial administration, including court determinations and document distribution. Accordingly, these patterns reflect systemic fragility in diversion governance that requires comprehensive institutional reform.¹⁰

The success of diversion implementation in the Juvenile Criminal Justice System is not solely determined by the number of cases diverted, but primarily by the quality of its handling. In this framework, the quality of diversion is operationalized through several key indicators, namely: (i) the rate of voluntary

⁸ Awang Munggardijaya et al., "Implementasi Diversi Terhadap Tindak Pidana Yang Dilakukan Oleh Anak Berdasarkan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak," *Innovative: Journal of Social Science Research* 5, no. 3 (2025): 2214–1132.

⁹ Mahkamah Agung Republik Indonesia "Laporan Tahunan Mahkamah Agung Republik Indonesia Tahun 2024," 2025.

¹⁰ Focus Group Discussion, "Tantangan dan Hambatan Implementasi Sistem Peradilan Pidana Anak di Indonesia," 10 July 2025.

agreement reached (voluntary agreement rate); (ii) the level of compliance with the agreed outcomes (compliance rate); (iii) the degree of meaningful participation of the parties in the deliberation process (meaningful participation); (iv) the sustainability of social relationship restoration (sustainability of social restoration); and (v) the post-diversion recidivism rate (post-diversion recidivism rate). Theoretically, these indicators align with the restorative justice evaluation framework, which emphasizes the restoration of social relationships, procedural legitimacy, and voluntary compliance.

Increasing the number of cases without strengthening institutional capacity, human resource competency, and supporting instruments has the potential to reduce the effectiveness of diversion. An orientation that emphasizes only quantity makes procedures formal, the substance of agreements shallow, and the involvement of parties minimal, so that the main objectives of diversion, such as recovery, reconciliation, and protecting the best interests of children, are not achieved. This condition aligns with the quantity–quality trade-off theory, which asserts that increasing the volume of cases handled without adequate capacity will reduce the quality of the results. Therefore, the effectiveness of diversion cannot be assessed solely through statistical data, but must be seen in terms of the quality of the process and the sustainability of the resulting social recovery.¹¹

External constraints contribute to the effectiveness of diversion, particularly when victims or family members refuse to reach a settlement. This refusal often leads to the failure of diversion, even though the Child Protection Law and the Child Protection and Child Protection Law provide a strong legal basis for restorative resolution. This situation demonstrates a gap between legal norms and social acceptance, even though philosophically, diversion aligns with prevailing legal values in Indonesian society, which prioritizes deliberation, consensus, and the restoration of social relations. Therefore, the failure of diversion due to a settlement agreement indicates that restorative values have not been fully internalized, both in law enforcement practice and in public perception.¹²

In positive law, the concept of living law is firmly grounded in Article 2 of Law Number 1 of 2023 concerning the Criminal Code, which recognizes the validity of living law as long as it does not conflict with Pancasila, the 1945

¹¹ Muhamad Aljabar Putra et al., “Diseminasi Diversi Dan Restoratif Justice Terhadap Masyarakat Pedesaan Dalam Penyelesaian Tindak Pidana Anak,” *Jurnal Dedikasi Hukum* 2, no. 3 (2022): 252–265.

¹² Beniharmoni Harefa et al., “Revisiting Juvenile Justice: A Restorative Approach To Homicide Accountability In Indonesia” 26, no. 2 (2024): 374–93.

Constitution, human rights, and general legal principles. This recognition marks a paradigm shift from a positivistic orientation to a recognition of living customary norms respected by society. These customary norms possess distinctive characteristics, such as a cosmic element that views violations as a disturbance of balance, a principle of harmony that prioritizes restoration, a communal orientation that places collective responsibility, and dimensions of spirituality and sacredness in conflict resolution. These eight fundamental elements of customary law demonstrate that a recovery-based case resolution process is actually more in line with the character of Indonesian society than a litigation model.¹³

The provisions of the new Criminal Code demonstrate that positive criminal law does not stand alone but interacts with customary law, which enjoys social legitimacy. In certain contexts, customary law-based solutions can replace formal legal processes if they gain social recognition and meet the basic principles of national law. This opens up space for strengthening diversion based on local values, so that juvenile criminal justice is not only subject to formal mechanisms but also utilizes local wisdom as part of the case resolution framework. Thus, legal pluralism provides the foundation for integrating state law and customary law to support the best possible recovery for children.¹⁴

The urgency of improving the diversion mechanism within the Juvenile Criminal Justice System arises not only from weak regulations, institutional capacity, or technical constraints, but also from the need to ensure its alignment with the legal values that exist within society.¹⁵ These values grow organically through practices, customs, and traditions passed down across generations, thus becoming embedded in the collective consciousness of the community. In the context of just law enforcement, alignment with these values is key to building social legitimacy for case resolution. If diversion implementation reflects these living legal values, community acceptance of the diversion outcome will be stronger, compliance with the agreement will be more stable, and the goal of rehabilitation for children will be more easily achieved. Therefore, adapting diversion to living law is not only normatively ideal but also strategic in creating a more humane, effective, and sustainable Juvenile Criminal Justice System.¹⁶

¹³ Gina Maulida, "Korelasi Hukum Adat Dan Restorative Justice: Membangun Keadilan Berbasis Kearifan Lokal Di Indonesia" 2, no. 1 (2025): 20–28.

¹⁴ Gatot Efrianto, "Hukum Adat Dalam Masyarakat Samin Dan Baduy" (Malang: PT. Literasi Nusantara Abadi Grup, 2024), 146.

¹⁵ Tody Sasmitha Jiwa Utama, "'Hukum Yang Hidup' dalam Rancangan Kitab Undang-Undang Hukum Pidana (KUHP): Antara Akomodasi dan Negasi."

¹⁶ Ni Nyoman Tri Partini, "Peran Hukum Adat Dalam Penegakan Hukum Dan Penyelesaian Sengketa," *Virtue Jurisprudence* 2, no. 2 (2024): 192–201.

The study employs a normative juridical method supported by empirical data gathered through Focus Group Discussions. The normative component is used to analyze statutory regulations, legal principles, and doctrines governing diversion within the Indonesian Juvenile Criminal Justice System, while the empirical component strengthens the assessment of policy reform needs, particularly the integration of living law into diversion mechanisms. Empirical data were collected through two FGDs. The first was held on 10 July 2025 by the Faculty of Law of UPN “Veteran” Jakarta in collaboration with the Supreme Court, the Attorney General’s Office, the National Police Headquarters, and the Indonesian Child Protection Commission (KPAI), featuring speakers such as Dr. Hj. Diah Sulastri Dewi, Dr. Erni Mustikasari, Endang Sri Lestari, and Dian Sasmita. The second FGD took place on 17 July 2025 in cooperation with Sultan Ageng Tirtayasa University, the National Education University of Bali, and Tanjungpura University, with speakers including Prof. Dr. Rena Yulia, Dr. AAA. Ngurah Tini Rusmini Gorda, and Dr. Hj. Sri Ismawati. Participants from UPN consisted of lecturers and researchers engaged in juvenile justice studies.

Informants were selected purposively based on the following criteria: (i) direct involvement in diversion practices and the handling of juvenile cases; (ii) professional experience as law enforcement officers, child protection practitioners, or academics in the field of customary law; and (iii) the ability to provide substantive perspectives on the implementation of restorative justice. The FGDs were conducted using a semi-structured guide focusing on three main issues: the practice and challenges of diversion implementation, the relevance of customary law values, and the potential for their integration into the national legal system. Although FGD participants were predominantly academics and legal practitioners, the analysis of the four customary communities (Baduy, Balinese, Dayak, and Nias) was not solely based on these discussions but was also verified through literature review, ethnographic studies, and documented customary law sources. This approach ensures that the representation of customary values is not merely based on academic interpretation but is supported by credible sources. FGD data were documented through discussion notes and transcripts, then analyzed using a qualitative-normative approach combining legal interpretation, thematic analysis of informants’ perspectives through a thematic coding process, and comparison between positive law and customary norms (Baduy, Balinese, Dayak, and Nias communities). This approach enables data triangulation across normative, empirical, and cultural perspectives, thereby enhancing the validity of the analysis.

Primary legal materials include Law No. 11 of 2012 on the Juvenile Criminal Justice System, the 1945 Constitution of the Republic of Indonesia, Law No. 35 of 2014 on Child Protection, and relevant provisions of the Indonesian Penal Code. Secondary materials comprise academic literature, FGD reports, and prior studies. The overall analysis integrates both normative and empirical findings to formulate a diversion policy model grounded in living law. To analyze the legal issues that are the focus of this research, three complementary approaches are used: a conceptual approach, a statutory approach, and a comparative approach.

Based on the background description, this study aims to provide a comprehensive analysis of two main questions. First, how can harmonization between living law and the concept of diversion in the Juvenile Criminal Justice System be effectively realized? Second, how can an ideal design be formulated for the implementation of juvenile criminal justice that is not only based on a formal normative framework but also accommodates legal values existing in society as a form of alignment between positive law and public legal awareness. Thus, this study is expected to provide theoretical and practical contributions to the development of a more humane, contextual, and sustainable Juvenile Criminal Justice System.

Harmony of Living Law in Society with the Concept of Diversion

The concept of living law in Indonesia refers to law that exists and evolves within societal practice, even if it is not codified, yet carries strong social legitimacy. This concept was introduced by Eugen Ehrlich, a legal sociologist, who emphasized that true law is not merely contained in written norms, but is reflected in social practices that are executed and respected by communities. In the Indonesian context, cultural and customary diversity makes living law highly relevant, as various unwritten norms continue to coexist alongside positive law, reflecting values, morals, and notions of justice that develop organically within society.¹⁷

Recognition of living law is also reflected in formal legal frameworks, particularly in Article 18B of the 1945 Constitution, which affirms the acknowledgment and protection of the rights of customary law communities, as long as they remain relevant to contemporary developments. Furthermore,

¹⁷ Ahmad Auri, Aji Zarianto, and Nadhira Wahyu Adityarani, "Eksistensi Sosiologi Hukum Pada Masyarakat Indonesia (Literature Review Atas Teori Living Law Eugen Ehrlich)," *Jurisdicthe : Jurnal Penelitian Hukum* 2, no. 2 (2025): 203–19.

Article 5 paragraph (1) of the Judicial Power Law stipulates the obligation of judges to explore, follow, and understand the legal values and sense of justice that live within society. Therefore, living law is not merely a theoretical concept but constitutes an integral part of legal practice that is formally recognized, while also serving as a source of material law in the formation and application of positive law.¹⁸

The existence of living law plays a strategic role in maintaining social balance because it arises from the actual needs of the community. For example, dispute resolution mechanisms based on deliberation in various regions demonstrate that communities prioritize restoration and reconciliation over rigid sanctions. This phenomenon confirms that living law can complement positive law by providing contextual, responsive solutions aligned with the justice values embraced by society, thereby enhancing social legitimacy in legal processes.¹⁹

In the field of criminal law, the New Criminal Code (Law No. 1 of 2023) explicitly acknowledges living law through Article 2. Article 2 paragraph (1) broadens the legality principle, allowing for the application of community-based law in determining criminal acts, even if such acts are not explicitly regulated in the Criminal Code.²⁰ Paragraph (2) sets the limitation that customary law applies only insofar as it does not conflict with the Criminal Code, Pancasila, the 1945 Constitution, human rights, and generally recognized principles of international law, and is applied within the jurisdiction where such law is established. This provision reflects an effort to harmonize national law with locally embedded norms.²¹

The recognition of living law in the New Criminal Code represents a paradigm shift in Indonesian criminal law, which no longer relies solely on the formal legality principle but also accommodates customary norms as long as they align with the fundamental principles of the state. Meanwhile, Article 6 of the Child Protection and Juvenile Justice Law emphasizes diversion as a mechanism for child rehabilitation, avoiding formal judicial processes while promoting a restorative, deliberative approach that preserves social harmony.

¹⁸ Achmad Asfi Burhanudin, "Eksistensi Hukum Adat Di Era Modernisasi," *Salimiya Jurnal Ilmu Keagamaan Islam* 2, no. 4 (2021): 96–113.

¹⁹ Bismar Siregar, "Living Law dan Dinamika Sosial: Integrasi Nilai-Nilai Kearifan Lokal Ke dalam Hukum Nasional." *Lex Lectio Law Journal* 4, no. 1 (2025): 14-28.

²⁰ Siregar.

²¹ Ni Putu Ari Setyaningsih and Putu Chandra Kinandana Kayuan, "Kompilasi Delik Adat Dalam Peraturan Daerah Sebagai Dasar Pemidanaan dalam Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana (RUU KUHP)," *Jurnal Yustitia* 16, no. 1 (2022): 71–79.

Ideologically, these provisions are complementary, as both prioritize local values oriented toward restoration and social equilibrium.²²

Nevertheless, the integration of living law with child diversion mechanisms faces practical challenges. No technical guidelines currently exist to ensure that customary norms used as the basis for diversion do not conflict with child protection principles under the Juvenile Justice Law. This represents a notable research gap, namely the normative and human rights limitations when customary law serves as the foundation for child diversion, which has not received sufficient attention in regulations or academic literature. Therefore, further study is required to ensure the effective harmonization of customary law, the Criminal Code, and child protection, while reinforcing the legitimacy of living law as a dynamic and adaptive source of law in Indonesia.

The concept of living law in society, as stipulated in Article 2 of the Criminal Code, can be seen as one of the important roots of the implementation of diversion in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. This is because living law essentially reflects the values that are alive, recognized, and practiced by society, including the principle of resolving cases through deliberation, peace, and restoring social balance. These values align with diversion objectives as stipulated in the Juvenile Criminal Justice System Law, which prioritizes the resolution of cases outside the formal justice system with an emphasis on restorative justice. In other words, diversion in the Juvenile Criminal Justice System can be understood as a form of formalization of legal practices that exist in society into the positive legal system, so that its implementation is inseparable from the socio-cultural roots of the Indonesian nation.²³

Diversion in the Juvenile Criminal Justice System is legally defined as the transfer of juvenile cases from the formal criminal justice process to a non-judicial settlement process. This definition is expressly stated in Article 1, number 7, of the Juvenile Criminal Justice System Law and reflects a paradigm shift in criminal law enforcement for juveniles. Diversion is not simply an administrative procedure to terminate a case, but rather a legal instrument that prioritizes restorative justice. This approach is based on the principles of the child's best interests, non-discrimination, proportionality, and the active participation of victims, perpetrators, families, and the community. Within this

²² Nella Sumika Putri, "The Material Content of Regional Regulations as the Concretization of the Living Legal System in Society (Adat Law) Based on Article 2 of the Indonesian Penal Code (KUHP) 2023," *Jurnal Bina Mulia Hukum* 7, no. 2 (2023): 15–16.

²³ Setya Wahyudi et al., "Recomposing the Handover and Return to Parents in the Juvenile Justice System in Indonesia: Dilemma between Best Interest of the Juvenile and Legal Shadow," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 8, no. 1 (2025): 263–284.

framework, case resolution is more directed at efforts to repair the victim's losses, restore social relations, and restore disturbed balance, rather than simply imposing punishment.²⁴

Diversion is also a concrete manifestation of the state's obligation to provide special protection to children in conflict with the law, considering that children are viewed as legal subjects with the potential to be fostered and rehabilitated, not merely punished. Thus, diversion has a strategic function in preventing negative impacts arising from children's involvement in the formal justice system, such as social stigma, impaired psychological development, and the risk of reoffending due to interactions with the correctional environment. The objectives of diversion are explicitly stipulated in Article 6 of the Juvenile Criminal Justice System Law, namely to achieve reconciliation between victims and children, resolve juvenile cases outside the judicial process, prevent children from being deprived of liberty, encourage community participation, and instill a sense of responsibility in children. These objectives illustrate the orientation of diversion, which shifts from a paradigm of retaliation to a paradigm of recovery.²⁵

The legal basis for diversion is not only regulated in the Juvenile Criminal Justice System, but also stems from international principles, such as the Convention on the Rights of the Child, ratified through Presidential Decree No. 36 of 1990. This Convention emphasizes that child detention should be a last resort and carried out for the shortest possible time, in line with the Beijing Rules and Riyadh Guidelines, which encourage non-punitive mechanisms. This principle is adopted by the Juvenile Criminal Justice System by requiring diversion at every stage of case examination, as long as the case meets the criteria, namely a sentence of less than seven years and not a repeat offense.²⁶

In practice, the integration of *living law* and diversion within the Juvenile Criminal Justice System indeed rests on a shared philosophical foundation, namely dispute resolution through deliberation, social restoration, and community participation. However, this conceptual alignment does not imply that customary mechanisms can be automatically applied without legal, moral, or human rights safeguards. Article 2 of the New Criminal Code acknowledges

²⁴ Wawan Wartawan, "Anak Yang Berhadapan Dengan Hukum Ditinjau Dalam Pertanggungjawaban Hukum Sesuai Dengan Sistem Peradilan Anak," *Jurnal Inovasi Global* 2, no. 9 (2024): 1186–1198.

²⁵ Ahmad Muchlis, "Penegakan Prinsip Kepentingan Terbaik Anak Pada Penerapan Diversi Dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum Progresif* 12, no. 1 (2024): 66–77.

²⁶ Ariyanti Panu, Roy Marthen Moonti, and Ibrahim Ahmad, "Reformasi Sistem Peradilan Pidana Anak Di Indonesia Antara Diversi, Restoratif, Dan Perlindungan Hak Anak" 2 (2025): 276–293.

the validity of customary criminal law, yet its application is strictly limited by Pancasila, the 1945 Constitution, and statutory child protection standards as stipulated in Articles 6 and 59 of the Child Protection Law. Consequently, any attempt to incorporate customary law into diversion must ensure compliance with the principles of the *best interests of the child*, non-discrimination, and the protection of the child's inherent dignity.²⁷

A number of risks may arise when *living law* is implemented without adequate human rights filtering or institutional verification. Some customary communities still employ dispute resolution practices that may result in *victim blaming*, pressure the victim to forgive in the name of communal harmony, or even lead to revictimisation, particularly in cases involving assault or sexual abuse of children. Customary sanctions such as exclusion, banishment, or ritual oaths also carry the potential to violate the standards of humane treatment mandated by the Convention on the Rights of the Child and the Beijing Rules. Moreover, the territorial character of customary law and the differing understandings of adulthood in various communities can generate jurisdictional overlaps between customary forums and the formal Juvenile Criminal Justice System, thereby creating legal uncertainty and opening avenues for abuse of authority.²⁸

In this context, the Social Defence Theory developed by Marc Ancel provides both a conceptual foundation and an operational framework for assessing the feasibility of integrating customary law into diversion mechanisms within the Juvenile Criminal Justice System. This theory views modern criminal law as an instrument of social protection that not only aims to maintain public order but also ensures humane treatment of offenders, particularly children, through an orientation toward rehabilitation, prevention, and social reintegration. In this study, these principles are operationalized through several key indicators, namely (i) the guarantee of the best interests of the child, (ii) the prevention of practices that may lead to revictimization, social pressure, or inhumane treatment, and (iii) an orientation toward recovery and social reintegration.

Within this framework, customary-based dispute resolution mechanisms cannot be applied automatically but must be assessed based on their conformity with these indicators. Customary practices that fail to meet protection standards, such as sanctions that degrade human dignity or potentially harm the

²⁷ Rena Yulia, Aliyth Prakarsa, and Mohammad Reevany Bustami, "Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy's Indonesia," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 803–854.

²⁸ Achmad Asfi Burhanudin, "Eksistensi Hukum Adat Di Era Modernisasi."

child, must be filtered or excluded. Accordingly, the integration of living law into diversion can only be carried out selectively, while ensuring compliance with child protection principles, the best interests of the child, and state oversight through strict and accountable procedural standards.²⁹

In line with the framework of the Social Defence Theory, customary law can indeed enrich restorative justice practices, particularly in communities where customary authorities possess strong social legitimacy. However, such integration still requires state oversight as a form of social protection to ensure that the mechanisms applied do not deviate from child protection principles. In this regard, the state plays a role through police assessment, prosecutorial verification, facilitation by trained professional mediators, and judicial validation by juvenile courts to ensure that diversion agreements do not violate human rights standards. This harmonization is essential to ensure that living law functions as a complementary value that strengthens the effectiveness of diversion, rather than becoming a new source of risk for children in conflict with the law or child victims of crime.³⁰

Similar practices can be found in various regions in Indonesia, such as the Baduy community, the Balinese community, the Dayak community, and the Nias community. Based on the research of Fathurokhman (2022), dispute resolution in the Baduy customary community is grounded in the view that an individual's legal responsibility is not determined by age, but by their level of social maturity and moral responsibility in adhering to *pikukuh* (customary rules). Dispute resolution is carried out in stages through family or community deliberation, known as *silih ngahampura*, which emphasizes forgiveness and the restoration of social relationships. If necessary, the process may proceed to compensation, temporary exclusion, or deliberation within the customary leadership forum (*Puun*) without involving formal legal proceedings. The sanctions imposed are generally alternative in nature, such as symbolic compensation, unpaid communal work, or customary exclusion, with the primary aim of maintaining harmony and social balance within the community.³¹

In Balinese traditional society, dispute resolution is based on the Tri Hita Karana philosophy, namely the principle of balance between humans and God

²⁹ Panu, Moonti, and Ahmad, "Reformasi Sistem Peradilan Pidana Anak Di Indonesia Antara Diversi, Restoratif, Dan Perlindungan Hak Anak."

³⁰ Munggardijaya et al., "Implementasi Diversi Terhadap Tindak Pidana Yang Dilakukan Oleh Anak Berdasarkan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak."

³¹ Yulia, Prakarsa, and Bustami, "Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy's Indonesia."

(*parahyangan*), humans and their fellow humans (*pawongan*), and humans and nature (*palemahan*). When violations occur, the village deliberation forum (*desa pakraman*) becomes the primary forum for finding solutions based on customary rules (*awig-awig*), with a priority on restoring social relations before the case is brought to formal channels. The forms of resolution vary, ranging from *mengaksama* (apology) as a first step, *dedosaan* (material fines) as a form of responsibility, *kerampang* (confiscation of assets) as a more severe sanction, to *kasepekang* (temporary ostracism) as a social mechanism to restore harmony within the community. This entire process demonstrates that Balinese customary law emphasizes reconciliation and social balance over mere punishment.³²

In the Dayak indigenous community, dispute resolution is based on collective family values, where every violation is viewed as a disruption to community harmony, not simply an individual error. The resolution process is carried out through restorative dialogue led by traditional elders such as *Timanggong*, *Pasirah*, or *Pangaraga*, with the primary goal of restoring social relations before the case is brought to formal channels. The form of sanctions imposed generally takes the form of material compensation in accordance with customary values, for example in the form of a *gong*, *belanga*, or *tawaq*, which reflect symbols of responsibility and the restoration of balance. In addition, there are also communal social sanctions that serve to strengthen collective awareness and maintain harmony in community life.³³

In the Nias indigenous community, living law is rooted in local wisdom values such as *Fo'adu* (kindness), *Fangaso* (welfare), *Fo'olo-olo hao-hao* (courtesy), *Fabarahao* (governance), and *Bowö masimasi* (compassionate justice). Disputes are resolved through a multi-level deliberation mechanism, starting with *Orahua Sifatalifuso* (family level), then *Orahua Zato* (community leaders), and continuing to *Orahua Mbanua* (village level), with a flexible system that adapts to the context of the case and local culture. The forms of customary sanctions imposed are restorative and corrective, including customary social work (*Famogagao*), material restitution (*Fangisu*), purification ceremonies (*Dara'ö*), customary fines (*Bara'ö*), and the granting of customary symbols (*Simbi*). In addition, there are also mechanisms for temporary social taboos, customary oaths (*Hoga'ö*), and ongoing guidance within the family.

³² Nadya Herlinawati et al., "Penyelesaian Sengketa Perkawinan Berbasis Hukum Adat Bali," *Jurnal Humaniora dan Sosial Sains* 2, no. 2 (2025): 222–27.

³³ Rahmad Satria et al., "Progresifitas Hukum Adat Dayak Kanayat'n Dalam Menjaga Ekosistem Lingkungan Hidup," *Jurnal Adat Dan Budaya Indonesia* 6, no. 2 (2024): 164–169.

Interestingly, all of these sanctions are always adjusted to the economic and social capacity of the perpetrator, thus placing more emphasis on substantive justice and the restoration of community harmony rather than just formal punishment³⁴, as shown on Table 1.

TABLE 1. Summary of the Feasibility of Customary Mechanisms for Diversion in the Juvenile Criminal Justice System

Customary Community	Main Mechanisms	Major Risks	Human Rights / Child Protection Concerns	Diversion Feasibility
Baduy	Family deliberation, symbolic compensation, temporary exclusion	Social pressure to “forgive,” stigma from exclusion	Potential violation of psychological protection and child dignity	Feasible only for minor offences
Bali	Village council mediation, fines, <i>kasepe kang</i> (social exclusion)	Social ostracism; economic burden on poor families	Conflicts with non-discrimination principles	Partially feasible (excluding social ostracism sanctions)
Dayak (Kanayatn)	Restorative dialogue, material restitution	Economic inequity; lack of psychological recovery for victims	Insufficient safeguards for child victims in traumatic cases	Feasible for non-traumatic, low-level offences
Nias	Tiered deliberation, fines, ritual purification, oath-taking	Pressure from lengthy processes; rituals may traumatize children	Inconsistent with CRC psychological protection standards	Partially feasible (excluding ritual/oath practices)

Source: Author, 2025

Explanatory Notes on Eligibility Criteria:

- Minor offense refers to criminal acts with low levels of harm, not causing serious trauma to the victim, and not involving severe violence or sexual

³⁴ Happy Murni Novitasari Zebua, “Jurnal Hukum Dan Kemasyarakatan Proses Penyelesaian Sengketa Melalui Hukum Adat Nias (Fondrako) Dalam Pembagian Harta Warisan (Studi Di Desa Ononamolo I Botomuzoi, Kecamatan Hiliduho, Kabupaten Nias),” *Jurnal Hukum dan Kemasyarakatan Al-Hikmah* 5, no. 3 (2024): 280–301.

crimes, and meeting the conditions for diversion as regulated in positive law (e.g., offenses with a maximum penalty below 7 years).

- Non-traumatic means cases that do not result in severe or prolonged psychological impact on the victim, allowing restorative approaches to be applied safely.
- Partially eligible means customary mechanisms can be used selectively, i.e., only in certain elements or stages that do not conflict with human rights and child protection principles, while practices with potential violations (such as social ostracism or specific rituals) must be excluded.
- Eligible means the mechanism is aligned with restorative justice and child protection principles, with manageable risks under state supervision.

The Table 1 shows that customary mechanisms in the four communities generally contain restorative values, but they do not fully align with child protection principles within the juvenile justice system. Several customary practices reveal concrete legal and ethical tensions when tested against international child rights standards as well as national provisions, including Articles 6 and 59 of Law Number 35 of 2014 on Child Protection. For example, social exclusion sanctions such as *kasepehang* in Bali or temporary exile in the Baduy community may conflict with children's rights to dignity and social inclusion as recognized in the Convention on the Rights of the Child (CRC) and guaranteed under the Child Protection Act. Similarly, ritual practices and oath-taking in the Nias community may pose psychological pressure, contradicting the principle of protecting children from mental harm. Additionally, strong social pressure to reach reconciliation within the community can undermine the voluntariness of diversion agreements and even encourage victim-blaming practices, particularly in cases involving violence or sexual offenses.³⁵

From an economic perspective, restitution-based sanctions present in some customary systems may also create inequalities, as children from low-income families may bear disproportionate burdens, thereby conflicting with principles of non-discrimination and child rights protection as regulated under the Child Protection Act. These examples demonstrate that tensions between customary law and child protection standards are not merely conceptual but tangible in practice, potentially compromising the best interests of the child as mandated in Article 6 of the Child Protection Act.³⁶

³⁵ Manurung, Amran, et al. "Kajian Sistematis Terhadap Regulasi Perlindungan Anak dalam Kerangka Hukum Nasional dan Internasional." *IMPERIUM RESEARCH: Law Science and Politics Journal* 1, no. 1 (2025): 1-8.

³⁶ Manurung, et.al.

Thus, the findings in the table emphasize that not all customary mechanisms can be directly formalized into diversion. Integration must be carried out selectively through a normative screening process, adopting only practices aligned with core child protection principles, including the best interests of the child, non-discrimination, protection from harm, and meaningful participation, while excluding practices that pose legal or ethical risks.

Despite these tensions, substantial similarities exist between diversion mechanisms in formal law and customary law practices. Both emphasize case resolution focused on social relationships, victim restitution, community-based reconciliation, and reducing stigma against the offender. Therefore, this study argues that customary law still has significant potential to be integrated into diversion mechanisms, provided such integration is grounded in the national legal framework, international child rights standards, and a clear ethical framework, and supported by institutional oversight mechanisms. With this approach, a juvenile justice system model can be developed that is legally robust, socially contextual, and fully compliant with Articles 6 and 59 of the Child Protection Act.³⁷

The Ideal Design of a Juvenile Criminal Justice System by Prioritizing Legal Values Living in Society

Strengthening the Juvenile Criminal Justice System through the integration of customary law values as living law has gained increasing relevance following the explicit recognition in Article 2 of the New Criminal Code that Indonesian criminal law is not only derived from statutes, but also from existing laws within society, as long as they do not conflict with Pancasila, the 1945 Constitution of the Republic of Indonesia, and human rights principles. This integration is closely linked to the Juvenile Criminal Justice System philosophy, particularly the objectives of diversion as stipulated in Articles 6 and 7 of Law No. 11 of 2012, which prioritize the best interests of children, the prevention of stigmatization, and the restoration of social relations. However, these integration efforts cannot stop at merely normative or descriptive explanations, as diversion practices in the field demonstrate a variety of structural, cultural, technical-operational, and normative barriers that complicate the implementation of customary values. Therefore, discussions regarding the

³⁷ Auri, Zarianto, and Adityarani, “Eksistensi Sosiologi Hukum Pada Masyarakat Indonesia (Literature Review Atas Teori Living Law Eugen Ehrlich).”

possibility of integrating customary law into the Juvenile Criminal Justice System require a more critical analysis, based on empirical findings, and taking into account the results of discussions in the Focus Group Discussion forum that identified fundamental issues in the implementation of diversion.³⁸

The FGD findings indicate that structural barriers are the most crucial factor in the failure of diversion, as they touch the very core of the juvenile criminal justice institution. Limited institutional capacity and low human resource quality not only represent technical issues but also demonstrate a paradigm shift among law enforcement officials, who still treat diversion as an administrative formality rather than as a recovery mechanism as mandated by Article 5 of the Juvenile Criminal Justice System Law. This flawed paradigm causes diversion to be implemented without adequate psychological sensitivity toward children and sufficient mediation skills, while the success of recovery depends heavily on the ability of officers to manage the relationships and emotional needs of the parties involved. The lack of ongoing training further deepens the gap between the normative demands of the juvenile criminal justice and actual practice, preventing the value of restorative justice from being substantially realized. This irregularity is exacerbated by the absence of a systematic monitoring mechanism, preventing the quality of diversion implementation from being measured, corrected, or improved.³⁹

In addition to human resource issues, the limited facilities such as Safe Houses, Social Welfare Institutions (*Lembaga Penyelenggaraan Kesejahteraan Sosial* or LPKS), Temporary Child Placement Institutions (*Lembaga Penempatan Anak Sementara* or LPAS), and Special Child Development Institutions (*Lembaga Pembinaan Khusus Anak* or LPKA) indicate that the state has not provided the minimum infrastructure to guarantee the implementation of diversion in accordance with child protection standards.⁴⁰

The lack of special placement facilities often forces officials to place children in adult detention centers, a practice that clearly contradicts Article 32 of the Juvenile Criminal Justice System Law and Article 37 of the CRC which expressly prohibits mixing children with adult detainees. Then, in terms of the provisions for the short detention period for children, namely 24 hours in the

³⁸ Focus Group Discussion, “Nilai Hukum Yang Hidup dalam Masyarakat dan Desain Ideal Sistem Peradilan Pidana Anak di Indonesia,” 17 July 2025.

³⁹ Nindy Dwiyanita Putri and Mitro Subroto, “Konsep Diversi Sebagai Realisasi Dari Restorative Justice Dalam Undang-Undang Sistem Peradilan Pidana Anak: Pendekatan Alternatif Dalam Pemulihan Anak Pelaku Tindak Pidana,” *Jurnal Ilmiah Muqoddimah: Jurnal Ilmu Sosial, Politik, dan Humaniora* 7, no. 3 (2023): 898.

⁴⁰ Ahmad Sofian et al., “Parental Child Abduction In Indonesia: A Criminal Law Perspective,” *Journal of Indonesian Legal Studies* 10, no. 1 (2025): 211–256.

police and 7+8 days in LPAS, it should encourage the acceleration of case handling, but the absence of facilities instead creates delays and legal uncertainty. This condition not only shows technical-administrative problems, but also shows the state's structural failure to fulfill its constitutional obligation to protect children as mandated by Article 28B paragraph (2) of the 1945 Constitution. Thus, the lack of supporting facilities not only hinders the effectiveness of diversion, but directly threatens the fulfillment of children's rights and the integrity of juvenile criminal justice as a justice system that should be oriented towards rehabilitation and recovery, not on imprisonment or treatment that degrades the dignity of children⁴¹ as shown on Table 2.

TABLE 2. Problems in Institutional Implementation of the Juvenile Criminal Justice System Law

Institution	Function	Problem	Implementation Status (2026)
Special Child Development Institution (<i>Lembaga Pembinaan Khusus Anak</i> or LPKA)	Institution or facility where children serve imprisonment separately from adults (ages 12–18).	Rehabilitation and support services still vary; limited capacity; some children are still placed in Adult Prisons.	33 LPKA across Indonesia (7 Class I, 26 Class II-B); current focus on rehabilitation, education, and protection of children's rights.
Social Welfare Institution (<i>Lembaga Penyelenggaraan Kesejahteraan Sosial</i> or LPKS)	Child care facility (under 12 years) and non-criminal social support.	Provision of facilities is still limited in some regions; service standards are uneven.	Limited availability; some regions still lack adequate LPKS.
Temporary Child Placement Institution (<i>Lembaga Penempatan Anak Sementara</i> or LPAS)	Temporary placement for children during judicial proceedings (ages 14–18).	Coordination with law enforcement is sometimes insufficient; limited capacity.	Still used as temporary detention, especially in regions without LPKA.

Source: *Institute For Criminal Justice Reform*

Cultural dimensions contribute significantly to the obstacles to diversion implementation. Community resistance to the idea of non-punitive solutions is

⁴¹ Marito Siregar, Bagio Kadaryanto, and Irawan Harahap, "Implementasi Penyediaan Ruang Khusus Terhadap Anak Di Polresta Pekanbaru," *The Juris* 8, no. 2 (2024): 470–481.

a common phenomenon encountered in FGDs. A retributive perspective remains so strong in some communities that diversion is viewed as a form of “leniency” that does not provide a deterrent effect for perpetrators. In fact, in certain contexts, communities consider customary settlements to be an insufficient mechanism for punishing perpetrators. Yet, Article 93 of the Child Protection and Rehabilitation Law emphasizes the role of community participation as an integral part of the implementation of the Child Protection and Rehabilitation and Rehabilitation and Rehabilitation Law. However, low legal literacy prevents communities from understanding that the primary goal of diversion is not punishment, but rather restoration of relationships, prevention of recidivism, and protection of children's futures. In some regions, low legal understanding correlates with minimal success in diversion, despite the high number of juvenile cases. This emphasizes that the integration of customary values can only be successful if accompanied by increased public legal awareness and the establishment of a more restorative legal culture.⁴²

Technical and operational issues remain serious obstacles in the implementation of diversion. Supreme Court data for 2024 indicate a significant increase in the number of diversion cases, reaching 996 cases or approximately 20.08% of all juvenile criminal cases. However, the success rate of diversion, calculated as the percentage of cases resolved through agreement and restoration between the offender and the victim relative to the total diversion cases, is only 42.57%, while 40.06% are still in the process of resolution and 17.37% are considered unsuccessful. This decline in the success rate indicates that the increase in diversion cases has not been matched by optimal quality in case resolution. Mediation processes remain slow, coordination among law enforcement agencies is weak, and there is no ongoing evaluation mechanism to assess compliance of diversion practices with restorative justice principles. This phenomenon highlights an imbalance between the quantity of diversion cases and the institutional capacity to handle them. Without strengthening institutional capacity, the quality of restoration between offenders and victims risks being neglected.⁴³

Methodological note: The success rate in the table is calculated using the following formula:

⁴² Siregar, Kadaryanto, and Harahap.

⁴³ Abdul Rahman, Zainal Amin Ayub, and Ratnawati, “Legal Framework for Protecting Children from Commercial Sexual Exploitation,” *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 8, no. 1 (2025): 87–110.

$$\text{Success Rate} = \frac{\text{Number of Successful Diversion Cases}}{\text{Total Diversion Cases}} \times 100\%$$

TABLE 3. Diversion Implementation Data for the 2021-2024 Period

Period	Number of Juvenile Criminal Cases	Number of Diversion Cases	%	Outcome Status					
				Successful	%	Unsuccessful	%	In Process	%
2021	5178	142	2.74	30	21.13	19	13.38	93	65.49
2022	5533	67	1.21	27	40.30	35	52.24	5	7.46
2023	5190	657	12.66	464	70.62	189	28.77	4	0.61
2024	4960	996	20.08	424	42.57	173	17.37	399	40.06

Source: Supreme Court's 2024 Annual Report

Normative constraints further complicate the overall landscape. Differences in the definition of a child between national and customary law can hinder the implementation of diversion. National law explicitly sets the age limit for children at 18 years, as stipulated in Article 1, number 1 of the Child Protection Law. However, in some customary communities, adulthood is determined by socioeconomic status or the ability to perform communal functions. This difference creates risks when perpetrators are considered adults under customary law but still considered children under national law, or vice versa. Furthermore, the principle of territoriality of customary law limits the application of customary mechanisms to certain communities. If the case involves parties from outside the community, customary resolution has the potential to give rise to jurisdictional conflicts and legal uncertainty. This is relevant to the principle of legality and legal certainty in Article 28D paragraph (1) of the 1945 Constitution.⁴⁴

In terms of the risks of customary integration, a critical assessment is required to prevent violations of children's rights. Within the framework of

⁴⁴ Imam Ahmad Ghazali, "Peran Masyarakat dalam Proses Diversi Tindak Pidana Anak Sebagai Upaya Mewujudkan Keadilan Restoratif," *Empower: Jurnal Pengembangan Masyarakat Islam* 5, no. 1 (2020): 64–82. For various conflict related to indogenous people and living law, please also see Aprilia Niravita, "Intersectionality and Indigenous Women's Land Rights in Indonesian Agrarian Conflicts". *The Indonesian Journal of Feminist Legal Studies* 1, no. 1 (2026): 121-50; Zulfikar Ahmad Fikri, and Prisca Agustinus Putri. "Legal Pluralism and Indigenous Land Rights Conflicts in Eastern Indonesia". *The Indonesian Journal of Sociolegal Development* 1, no. 1 (2026): 1-30; Bagas Putra Pamungkas, "Oligarchic Influence and the Crisis of Environmental Law Enforcement in Indonesia". *The Indonesian Journal of Critical Legal Studies* 1, no. 1 (2026): 1-30.

child protection, the risks of customary integration cannot be ignored because customary law exists within a social structure that is not always sensitive to children's rights. One of the most significant risks is the potential for re-victimization when customary resolution prioritizes social harmony over individual recovery. In many customary communities, conflict resolution is often accompanied by social pressure for victims, including children, to accept peace in order to maintain communal harmony.⁴⁵

However, the Juvenile Criminal Justice System requires that every diversion process be carried out with voluntary consent and without coercion. This provision is implicitly reflected in Article 8 of the Child Protection and Child Protection Law, which requires the diversion process to be conducted through deliberations involving the perpetrator, victim, parents, community counselors, and professional social workers. If customary resolution is pursued under conditions that pressure victims to agree to peace, then this mechanism violates Article 16 of the CRC concerning protection against psychological distress and violations of children's dignity, and does not fulfill the principle of the best interests of the child, as emphasized in General Comment No. 14 (2013) UN Committee on the Rights of the Child.⁴⁶

In addition to the risk of re-victimization, customary integration also has the potential to contain communal bias that is inconsistent with the principle of non-discrimination. Many customary structures are hierarchical, placing traditional leaders or heads of families as the dominant voices in decision-making. In the context of resolving child cases, this hierarchical model can ignore children's right to be heard as stipulated in Article 12 of the CRC and Article 64 of the Child Protection Law. In a number of cases in Eastern Indonesia, for example, customary decisions are often made by elders without considering the views of the child perpetrators or the child victims. This model contradicts the spirit of the Juvenile Criminal Justice System, which defines children as legal subjects and not objects of family or community decisions. In fact, some customary communities continue to treat child perpetrators with certain standards of maturity, for example through oath rituals, purification ceremonies, or ostracization, which, if applied to children, can be categorized as

⁴⁵ Dwiki Oktobrian et al., "Pengelolaan Peran Serta Masyarakat Dalam Implementasi Diversi Sebagai Evaluasi Satu Dekade Sistem Peradilan Pidana Anak," *Seminar Nasional Pengembangan Sumber Daya Perdesaan dan Kearifan Lokal Berkelanjutan* 14 (September 2023).

⁴⁶ Teguh Hariyono, "Mediasi Penal Sebagai Alternatif Upaya Penyelesaian Perkara Pidana Di Luar Pengadilan," *Jurnal Penegakan Hukum Dan Keadilan* 2, no. 1 (2021): 1–18.

a form of degrading treatment as prohibited by Article 28G paragraph (1) of the 1945 Constitution and Article 37 of the CRC.⁴⁷

Another risk arises in the form of economic inequality. The value of restitution in customary mechanisms is often imposed on the perpetrator's family in the form of customary fines, symbolic goods, or livestock. In some areas, such as Nias and Dayak, customary fines can reach significant economic value. This has the potential to create discrimination against poor perpetrator families and is contrary to the principle of equality before the law as guaranteed by Article 27 paragraph (1) of the 1945 Constitution. The experience of several studies shows that perpetrator families from economically disadvantaged groups tend to accept customary settlements without negotiation because they are unable to reject customary demands or bear social sanctions if the fine is not paid. This problem shows that not all customary mechanisms are inherently restorative, but can also create detrimental structural consequences. Therefore, claims of customary effectiveness must be tested with empirical measurements and cannot be concluded simply from romantic assumptions about social harmony.⁴⁸

Despite facing various risks, customary mechanisms still have the potential to contribute significantly to strengthening restorative justice in the Juvenile Criminal Justice System. Social legitimacy is a prominent factor in the superiority of customary mechanisms. Resolutions pursued through customary institutions are often considered more socially acceptable, culturally understandable, and socially reassuring. This kind of legitimacy is crucial in implementing diversion, which requires mutual acceptance between the perpetrator, victim, and community. In this context, Article 5 of the Juvenile Criminal Justice System Law, which affirms the principle of restorative justice, can gain a strong social foundation through the integration of local cultural values. However, social legitimacy only becomes a strength when customary mechanisms remain aligned with human rights and child protection principles. If social legitimacy results in the subordination of children's rights to communal interests, then customary values cannot be directly integrated.⁴⁹

⁴⁷ Oktobrian et al., "Pengelolaan Peran Serta Masyarakat Dalam Implementasi Diversi Sebagai Evaluasi Satu Dekade Sistem Peradilan Pidana Anak."

⁴⁸ Indah Sri Utari, Ridwan Arifin, and Diandra Preludio Ramada, "Exploring Child Grooming Sexual Abuse through Differential Association Theory: A Criminological and Legal Examination with Constitutional Implications," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 7, no. 1 (2024): 69–88.

⁴⁹ Hanafi, "The Concept of Understanding Children in Positive Law and Customary Law," *VOICE JUSTISIA: Jurnal Hukum Dan Keadilan* 6, no. 2 (2022): 27.

Another aspect often cited as an argument for the superiority of customary mechanisms is their time and cost efficiency. Formal litigation requires lengthy administrative and judicial processes, while customary dispute resolution can resolve conflicts more quickly and without significant expense. However, this effectiveness is contextual and cannot be generalized. Some customary communities have resolution rites that are actually lengthier, require substantial material contributions, or involve communal ceremonies that are not child-friendly. The efficiency of customary dispute resolution can only be justified if it meets objective indicators, namely: faster resolution time, lower costs, a high level of victim satisfaction, and a lack of stigmatization of children. Without such empirical evidence, the argument that customary law is more effective remains merely normative and cannot yet serve as a basis for integration into national policy.⁵⁰

Alternatively, the integration of customary law into the Juvenile Criminal Justice System must be aligned with formal legal mechanisms through a clear procedural design. Customary involvement should begin after the police have conducted a diversion feasibility assessment, including assessing whether the customary settlement has the potential to harm the victim or create social pressure. At the pre-prosecution stage, the prosecutor, as the case controller, needs to conduct independent verification to ensure that the victim's consent is truly free from interference. The customary mediation process should be led by a professional mediator who understands child protection principles, while customary leaders play a complementary role in providing cultural context.⁵¹ Diversion agreements must be validated by a juvenile judge, as stipulated in Article 12 of the Juvenile Criminal Justice System Law, so that the court retains its oversight function to ensure that no agreement violates human rights or harms the child. If the agreement contains elements of recovery, post-diversion monitoring should be conducted by the Correctional Center (Bapas) to ensure that recovery does not stop at a symbolic aspect but actually leads to social rehabilitation.⁵²

Based on these considerations, limiting cases that can be resolved through customary mechanisms has become a normative urgency. Article 7 of the

⁵⁰ Rahman, Ayub, and Ratnawati, "Legal Framework for Protecting Children from Commercial Sexual Exploitation."

⁵¹ Beniharmoni Harefa and Lieni Eprencia Bunga Sitompul, "Peran Lembaga Perlindungan Anak Mengadvokasi Anak Pelaku Tindak Pidana," *Jurnal Hukum Pidana Dan Kriminologi* 2, no. 2 (2021): 30–48.

⁵² Maria Silvy E. Wangga et al., "Periscope of Ideas Selective Criteria for the Application of Restorative Justice in Corruption Crimes," *Journal of Indonesian Legal Studies* 9, no. 1 (2024): 1–30.

Juvenile Justice and Child Protection Law stipulates that diversion can only be implemented for crimes punishable by less than seven years or that are not considered a repeat offense.⁵³ However, this limitation must be further clarified in the customary context. Serious crimes such as sexual violence, child trafficking, exploitation, and serious abuse are not appropriate for resolution through customary mechanisms due to the complexity of their psychological impact. International provisions such as the Beijing Rules (1985) and the Havana Rules (1990) emphasize the importance of special mechanisms for dealing with child victims and perpetrators, particularly in cases that cause trauma. In this context, customary mechanisms lack adequate medical or psychosocial instruments to ensure professional victim recovery.⁵⁴

To ensure proper customary integration, the state must strengthen institutions by developing national guidelines for customary integration within the Juvenile Criminal Justice System. These guidelines should establish acceptable customary sanctions, child protection standards, and requirements for the participation of customary leaders. Customary leaders involved in diversion must undergo accreditation or training in human rights, gender sensitivity, and restorative justice principles. Furthermore, independent monitoring is necessary to prevent irregularities, decision manipulation, or the dominance of communal interests. A national database of customary diversion agreements also needs to be established so that the legal process can be evaluated transparently.⁵⁵

From the perspective of Barda Nawawi Arief's Policy-Oriented Approach, the reform of diversion must be understood as an integral component of national criminal law policy aimed at safeguarding society, upholding human dignity, and achieving social justice. This approach requires that criminal law policies be formulated on the basis of empirical data, local values, and regulatory effectiveness, thereby ensuring that the integration of customary law into diversion is not merely normative but aligned with the humanistic and restorative aims of modern penal policy. Accordingly, the normative framework of the Juvenile Criminal Justice System must be strengthened through more specific regulations capable of providing operational guidance regarding the requirements, limitations, and procedures for involving customary mechanisms

⁵³ Muhammad Ridho Sinaga and Novalinda Nadya Putri, "Tindak Pidana Oleh Anak: Suatu Kajian Dan Analisis Fungsi Sertifikasi Penyidik Anak Di Kepolisian," *Unes Law Review* 6, no. 1 (2023): 484–492.

⁵⁴ Ahmad Muchlis, "Penegakan Prinsip Kepentingan Terbaik Anak Pada Penerapan Diversi Dalam Sistem Peradilan Pidana Anak."

⁵⁵ Ridho Sinaga and Putri, "Tindak Pidana Oleh Anak: Suatu Kajian Dan Analisis Fungsi Sertifikasi Penyidik Anak Di Kepolisian."

in the diversion process. In this way, the ideal design of the Juvenile Criminal Justice System does not rely solely on formal regulation, but instead incorporates the living legal values of society in a measurable, accountable, and policy-oriented manner.⁵⁶

Conclusion

The integration of living law into the Indonesian Juvenile Justice System can be achieved as a complementary mechanism within the formal diversion framework, provided that its application is subject to clear legal safeguards, human rights standards, and procedural supervision. This study finds that customary dispute resolution has the potential to strengthen restorative justice by providing culturally legitimate and community-based solutions; however, it cannot operate independently due to risks of coercion, revictimization, discrimination, and unequal treatment. Therefore, living law should not replace the state's juvenile justice mechanisms but function as a controlled component that supports the protection and rehabilitation of children in conflict with the law.

This study proposes a hybrid integration model that combines customary dispute resolution with formal criminal justice procedures through assessment, verification, professional mediation, and judicial oversight. The effectiveness of this model depends on institutional reforms, including the accreditation and training of customary actors, strengthening the capacity of juvenile correctional institutions, and establishing monitoring mechanisms to ensure compliance with child protection principles. Through this structured approach, living law can become a meaningful element of Indonesia's juvenile justice system by promoting restorative outcomes while safeguarding the rights, dignity, and best interests of children.

References

- Burhanudin, Achmad Asfi. "Eksistensi Hukum Adat di Era Modernisasi." *Salimiya: Jurnal Studi Ilmu Keagamaan Islam* 2, no. 4 (2021): 96-113. <https://doi.org/10.2906/salimiya.v2i4.466>
- Efrianto, Gatot. *Hukum Adat dalam Masyarakat Samin dan Baduy*. (Malang: PT. Literasi Nusantara Abadi Grup, 2024).

⁵⁶ Arpandi Karjono and Parningotan Malau, "Penerapan Keadilan Restoratif Justice Dalam Hukum Pidana Berbasis Kearifan Lokal [Application of Restorative Justice in Local Wisdom-Based Criminal Law]," *Jurnal USM Law Review* 7, no. 2 (2024): 1035.

- Fikri, Zulfikar Ahmad, and Prisca Agustinus Putri. "Legal Pluralism and Indigenous Land Rights Conflicts in Eastern Indonesia". *The Indonesian Journal of Sociolegal Development* 1, no. 1 (2026): 1-30. <https://inleads.id/publications/index.php/IJSLD/article/view/11>.
- Focus Group Discussion. "Nilai Hukum Yang Hidup dalam Masyarakat dan Desain Ideal Sistem Peradilan Pidana Anak di Indonesia," 17 July 2025.
- Focus Group Discussion. "Tantangan dan Hambatan Implementasi Sistem Peradilan Pidana Anak di Indonesia," 10 July 2025.
- Ghozali, Imam Ahmad. "Peran Masyarakat dalam Proses Diversi Tindak Pidana Anak Sebagai Upaya Mewujudkan Keadilan Restoratif." *Empower: Jurnal Pengembangan Masyarakat Islam* 5, no. 1 (2020): 64-82. <https://doi.org/10.24235/empower.v5i1.6375>
- Hanafi, Hanafi. "The Concept of Understanding Children in Positive Law and Customary Law." *VOICE JUSTISIA: Jurnal Hukum dan Keadilan* 6, no. 2 (2022): 25-35.
- Harefa, Beniharmoni, and Lieni Eprencia Bunga Sitompul. "Peran Lembaga Perlindungan Anak Mengadvokasi Anak Pelaku Tindak Pidana." *Jurnal Hukum Pidana dan Kriminologi* 2, no. 2 (2021): 30–48. <https://doi.org/10.51370/jhpk.v2i2.54>
- Harefa, Beniharmoni, Diajeng Dhea, Annisa Aura, and Islami Supardi. "Revisiting Juvenile Justice: A Restorative Approach To Homicide Accountability In Indonesia." *Kanun Jurnal Ilmu Hukum* 26, no. 2 (2024): 374–393. <https://doi.org/10.24815/kanun.v26i2.38583>
- Hariyono, Teguh. "Mediasi Penal Sebagai Alternatif Upaya Penyelesaian Perkara Pidana di Luar Pengadilan." *Jurnal Penegakan Hukum dan Keadilan* 2, no. 1 (2021): 1–18. <https://doi.org/10.18196/jphk.v2i1.8731>
- Herlinawati, Nadya, Natasya Edisstyia Ningsih, Muhammad Rifky Fauzan, and Nurlailah. "Penyelesaian Sengketa Perkawinan Berbasis Hukum Adat Bali." *Jurnal Humaniora dan Sosial Sains* 2, no. 2 (2025): 222–227. <https://humaniorasains.id/jhss/article/view/103>
- Karjono, Arpandi, and Parningotan Malau. "Penerapan Keadilan Restoratif Justice Dalam Hukum Pidana Berbasis Kearifan Lokal [Application of Restorative Justice in Local Wisdom-Based Criminal Law]." *Jurnal USM Law Review* 7, no. 2 (2024): 1035. <https://doi.org/10.26623/julr.v7i2.9571>
- ktobrian, Dwiki, et.al. "Pengelolaan Peran Serta Masyarakat dalam Implementasi Diversi Sebagai Evaluasi Satu Dekade Sistem Peradilan Pidana Anak," *Prosiding Seminar Nasional Pengembangan Sumber Daya Perdesaan dan Kearifan Lokal Berkelanjutan* 14, (September 2024): 121-134. <https://jos.unsoed.ac.id/index.php/semnaslppm/article/view/15301>

- Mahkamah Agung Republik Indonesia. *Laporan Tahunan Mahkamah Agung Republik Indonesia Tahun 2024*. (Jakarta: MA RI, 2025).
- Manurung, Amran, et al. "Kajian Sistematis Terhadap Regulasi Perlindungan Anak dalam Kerangka Hukum Nasional dan Internasional." *IMPERIUM RESEARCH: Law Science and Politics Journal* 1, no. 1 (2025): 1-8. <https://journal.e-dinasti.org/IMPERIUM/article/view/21>
- Maulida, Gina. "Korelasi Hukum Adat dan Restorative Justice: Membangun Keadilan Berbasis Kearifan Lokal di Indonesia." *Pikukuh: Jurnal Hukum dan Kearifan Lokal* 2, no. 1 (2025): 20-28. <https://dx.doi.org/10.51825/pkh.v2i1.29382>
- Muchlis, Ahmad. "Penegakan Prinsip Kepentingan Terbaik Anak Pada Penerapan Diversi dalam Sistem Peradilan Pidana Anak." *Jurnal Hukum Progresif* 12, no. 1 (2024): 66-77. <https://doi.org/10.14710/jhp.12.1.66-77>
- Mulyadi, Lilik. *Wajah Sistem Peradilan Pidana Anak Indonesia*. (Bandung: Penerbit Alumni, 2023).
- Munajat, Munajat. *Hukum Pidana Anak di Indonesia*. (Jakarta: Sinar Grafika, 2022).
- Munggardijaya, Awang, Hernawati Hernawati, Yeti Kurniati, and Rini Ayu Susanti. "Implementasi Diversi Terhadap Tindak Pidana Yang Dilakukan oleh Anak Berdasarkan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak." *Innovative: Journal of Social Science Research* 5, no. 3 (2025): 2214–2232. <https://doi.org/10.31004/innovative.v5i3.19322>
- Nahda, Alifah, Zahra Zeta Donita, Alfi Syahrin, and Aflia Ramadhani Siregar. "Diversi dalam Perspektif Psikologi Anak." *Judge: Jurnal Hukum* 6, no. 01 (2025): 275–281. <https://doi.org/10.54209/judge.v6i01.1049>
- Niravita, Aprila. "Intersectionality and Indigenous Women's Land Rights in Indonesian Agrarian Conflicts". *The Indonesian Journal of Feminist Legal Studies* 1, no. 1 (2026): 121-50. <https://inleads.id/publications/index.php/IJFLS/article/view/5>.
- Oktavia, Sri Rahayu, and Hervina Puspitosari. "Analisis Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Pencurian dengan Diversi Berdasarkan Undang-Undang No 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak." *COMSERVA Jurnal Penelitian dan Pengabdian Masyarakat* 2, no. 12 (2023): 167–186. <https://doi.org/10.59141/comserva.v2i12.717>
- Pamungkas, Bagas Putra. "Oligarchic Influence and the Crisis of Environmental Law Enforcement in Indonesia". *The Indonesian Journal of*

- Critical Legal Studies* 1, no. 1 (2026): 1-30. <https://inleads.id/publications/index.php/IJCLS/article/view/16>.
- Panu, Ariyanti, Roy Marthen Moonti, and Ibrahim Ahmad. "Reformasi Sistem Peradilan Pidana Anak di Indonesia Antara Diversi, Restoratif, dan Perlindungan Hak Anak." *Politika Progresif: Jurnal Hukum, Politik dan Humaniora* 2, no. 2 (2025): 276-293. <https://doi.org/10.62383/progres.v2i2.1885>
- Partini, Ni Nyoman Tri. "Peran Hukum Adat dalam Penegakan Hukum dan Penyelesaian Sengketa." *Virtue Jurisprudence* 2, no. 2 (2024): 192–201.
- Putra, Muhamad Aljabar, Imas Novita Juaningsih, Pingki Pratiwi, and Abel Parvez. "Diseminasi Diversi dan Restoratif Justice Terhadap Masyarakat Pedesaan Dalam Penyelesaian Tindak Pidana Anak." *Jurnal Dedikasi Hukum* 2, no. 3 (2022): 252–265. <https://doi.org/10.22219/jdh.v2i3.21634>
- Putri, Nella Sumika. "The Material Content of Regional Regulations as the Concretization of the Living Legal System in Society (Adat Law) Based on Article 2 of the Indonesian Penal Code (KUHP) 2023." *Jurnal Bina Mulia Hukum* 7, no. 2 (2023): 15–16. <https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/1101>
- Rahman, Abdul, Zainal Amin Ayub, and Ratnawati. "Legal Framework for Protecting Children from Commercial Sexual Exploitation." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 8, no. 1 (2025): 87–110. <https://doi.org/10.24090/volksgeist.v8i1.13156>
- Ridho Sinaga, Muhammad, and Novalinda Nadya Putri. "Tindak Pidana oleh Anak: Suatu Kajian dan Analisis Fungsi Sertifikasi Penyidik Anak di Kepolisian." *Unes Law Review* 6, no. 1 (2023): 484–492. <https://doi.org/10.31933/unesrev.v6i1.867>
- Saragih, Asmita Widimartha Nainggolan dan Yasmirah Mandasari. "Penerapan Diversi Terhadap Anak Yang Berhadapan dengan Hukum dalam Sistem Peradilan Anak." *Journal of Social Science Research* 3, no. 4 (2023): 6371–6383.
- Satria, Rahmad, Anita Yulastini, Yuko Fitrian, and Agustinus Astono. "Progresifitas Hukum Adat Dayak Kanayat'n dalam Menjaga Ekosistem Lingkungan Hidup." *Jurnal Adat dan Budaya Indonesia* 6, no. 2 (2024): 164–169. <https://doi.org/10.23887/jabi.v6i2.66723>
- Setyaningsih, Ni Putu Ari, and Putu Chandra Kinandana Kayuan. "Kompilasi Delik Adat Dalam Peraturan Daerah Sebagai Dasar Pemidanaan dalam Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana (RUU KUHP)." *Jurnal Yustitia* 16, no. 1 (2022): 71–79. <https://doi.org/10.62279/yustitia.v16i1.902>

- Siregar, Bismar. "Living Law dan Dinamika Sosial: Integrasi Nilai-Nilai Kearifan Lokal Ke dalam Hukum Nasional." *Lex Lectio Law Journal* 4, no. 1 (2025): 14-28. <https://doi.org/10.61715/jll.v4i1.103>
- Siregar, Marito, Bagio Kadaryanto, and Irawan Harahap. "Implementasi Penyediaan Ruangan Khusus Terhadap Anak di Polresta Pekanbaru." *The Juris* 8, no. 2 (2024): 470-81. <https://doi.org/10.56301/juris.v8i2.1349>
- Sofian, Ahmad, Rena Yulia, Rio Hendra, Melly Setyawati, and Mark P Capaldi. "Parental Child Abduction In Indonesia: A Criminal Law Perspective." *Journal of Indonesian Legal Studies* 10, no. 1 (2025): 211-56. <https://doi.org/10.15294/jils.v10i1.1760>
- Utama, Tody Sasmita Jiwa. "'Hukum Yang Hidup' dalam Rancangan Kitab Undang-Undang Hukum Pidana (KUHP): Antara Akomodasi dan Negasi." *Masalah-Masalah Hukum* 49, no. 1 (2020): 14-25. <https://doi.org/10.14710/mmh.49.1.2020.14-25>
- Utari, Indah Sri, Ridwan Arifin, and Diandra Preludio Ramada. "Exploring Child Grooming Sexual Abuse through Differential Association Theory: A Criminological and Legal Examination with Constitutional Implications." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 7, no. 1 (2024): 69-88. <https://doi.org/10.24090/volksgeist.v7i1.9564>
- Utomo, Handika Ridho, and Anis Widyawati. "Implementasi Diversi pada Tindak Pidana Narkotika Anak Guna Mewujudkan Keadilan Restoratif (Studi Kasus Kota Salatiga)." *IPMHI Law Journal* 5, no. 1 (2025): 117-143. <https://doi.org/10.15294/ipmhi.v5i1.26158>
- Wahyudi, Setya, Rani Hendriana, Dwiki Oktoberian, and Bhanu Prakash Nunna. "Recomposing the Handover and Return to Parents in the Juvenile Justice System in Indonesia: Dilemma between Best Interest of the Juvenile and Legal Shadow." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 8, no. 1 (2025): 263-84. <https://doi.org/10.24090/volksgeist.v8i1.13130>
- Wangga, Maria Silvy E., Nadzriah Ahmad, Jufryanto Puluhulawa, and Vifi Swarianata. "Periscope of Ideas Selective Criteria for the Application of Restorative Justice in Corruption Crimes." *Journal of Indonesian Legal Studies* 9, no. 1 (2024): 1-30. <https://doi.org/10.15294/jils.vol9i1.4530>
- Wartawan, Wawan. "Anak Yang Berhadapan dengan Hukum Ditinjau dalam Pertanggungjawaban Hukum Sesuai dengan Sistem Peradilan Anak." *Jurnal Inovasi Global* 2, no. 9 (2024): 1186-1198. <https://doi.org/10.58344/jig.v2i9.154>
- Widyawati, Anis, Didik Purnomo, Heru Setyanto, and Leony Sondang Suryani. "Strengthening the Correctional System through Electronic Supervision of Prisoners: A Comparative Legal Study for Reforming

- Indonesia's Penitentiary Law." *Jurnal Hukum Novelty* 16, no. 2 (2025): 262-281. <https://doi.org/10.26555/jhn.v16i2.30503>
- Yulia, Rena, Aliyth Prakarsa, and Mohammad Reevany Bustami. "Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy's Indonesia." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 803–54. <https://doi.org/10.15294/jils.v8i2.72283>
- Zarianto, Ahmad Auri Aji, and Nadhira Wahyu Adityarani. "Eksistensi Sosiologi Hukum pada Masyarakat Indonesia (Literature Review atas Teori Living Law Eugen Ehrlich)." *Juridische: Jurnal Penelitian Hukum* 2, no. 3 (2025): 203-219.
- Zebua, Happy Murni Novitasari. "Jurnal Hukum Dan Kemasyarakatan Proses Penyelesaian Sengketa Melalui Hukum Adat Nias (Fondrako) dalam Pembagian Harta Warisan (Studi di Desa Ononamolo I Botomuzoi, Kecamatan Hiliduh, Kabupaten Nias)." *Jurnal Hukum dan Kemasyarakatan Al-Hikmah* 5, no. 3 (2024): 280–301. <https://doi.org/10.30743/jhah.v5i3.10064>

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